

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HE LI, CHANGAI ZHUO, and ZEHAO LI	:	
	:	
Plaintiffs,	:	
	:	C.A. No. 06-733-JJF
v.	:	
	:	
MICHAEL CHERTOFF, Secretary of the	:	
Department of Homeland Security, EMILIO	:	
T. GONZALEZ, Director of U.S.	:	
Citizenship & Immigration Services	:	
(USCIS); PAUL E. NOVAK, JR., Vermont	:	
Service Center Director, U.S. Citizenship &	:	
Immigration Services; ROBERT S.	:	
MUELLER, Director of Federal Bureau of	:	
Investigation,	:	
	:	
Defendants.	:	

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANTS' AMENDED MOTION TO DISMISS**

COLM F. CONNOLLY
United States Attorney

By: Seth M. Beausang (I.D. No. #4071)
Assistant United States Attorney
1007 N. Orange Street, Suite 700
Wilmington, Delaware 19801
(302) 573-6277

Dated: May 8, 2007.

1. On April 10, 2004, Plaintiffs He Li, Changai Zhuo, and Zehao Li filed a I-485 application (the “Application”) asking the United States Attorney General to adjust their immigration status to that of permanent residents. (Compl. ¶ 12.) On December 4, 2006, Plaintiffs appeared pro se and filed the present action seeking a writ of mandamus to compel Defendants¹ to “properly adjudicate Plaintiffs’ [I-485] application,” “provide Plaintiffs with Notice of Approval” of that application, and asking the Court to grant such other relief “as justice may require.” (*Id.* ¶ 29.)

2. On April 11, 2007, Defendants filed a Motion to Dismiss Plaintiffs’ Complaint and a Memorandum in Support Thereof. (Doc. Nos. 6, 7.) The Memorandum stated that the I-485 Applications for Plaintiffs He Li and Changai Zhuo had been approved and that those approvals were attached as exhibits. (Doc. No. 7 at 4.) Apparently those exhibits were not docketed, but they are attached hereto as Exhibits A and B.

3. The Defendants’ Memorandum also stated that the I-485 Application for Plaintiff Zehao Li had not yet been approved. On April 30, 2007, the I-485 Application for Plaintiff Zehao Li was approved, and a copy of that approval is attached hereto as Exhibit C.

4. Plaintiffs’ Complaint should therefore be dismissed for lack of subject matter jurisdiction. Because Plaintiffs have obtained the relief they seek, Plaintiffs’ Complaint should be dismissed as moot. *See, e.g., Shi v. Chertoff*, No. 06-CV-0470-CVE-FHM, 2006 WL 3253107, at *1 (N.D. Okla. Nov. 8, 2006) (“Plaintiff filed her I-485 and applied for permanent residence on October 2, 2002. She filed this action on September 11, 2006 on the ground that

¹The Defendants are Michael Chertoff, Secretary of the Department of Homeland Security; Emilio T. Gonzalez, Director of U.S. Citizenship & Immigration Services (“USCIS”); Paul E. Novak, Jr., Vermont Service Center Director, USCIS; and Robert S. Mueller, Director of Federal Bureau of Investigation.

defendants improperly delayed the processing of her application. However, the United States Citizenship and Immigration Services (“CIS”) has approved her application. See Dkt. # 13, Ex. A. Since there is no further substantive relief sought by plaintiff, this action is moot, and the Court dismisses the action for lack of subject matter jurisdiction.”).

5. For the foregoing reasons, and as further explained in the Government’s Motion to Dismiss (Doc. Nos. 6, 7), the Government respectfully requests that the Court dismiss Plaintiffs’ Complaint.

DATED: May 8, 2007.

Respectfully Submitted,

COLM F. CONNOLLY
United States Attorney

By: /s/ Seth M. Beausang
Seth M. Beausang (I.D. No. 4071)
Assistant United States Attorney
The Nemours Building
1007 Orange Street, Suit 700
Wilmington, DE 19801
(302) 573-6277

CERTIFICATE OF SERVICE

I, Seth M. Beausang, hereby attest under penalty of perjury that on this 8th day of May, 2007, I caused two copies of Defendants' Amended Motion to Dismiss, Memorandum of Points and Authorities in Support Thereof and Proposed Order to be served on the Plaintiffs by First Class Mail at the following address:

He Li
Changai Zhuo
Zehao Li
403 King Rail Court
Middletown, DE 19709
(302)378-8256
PRO SE

/s/ Seth M. Beausang
Seth M. Beausang (DE I.D. No. 4071)

EXHIBIT A

U.S. Department of Justice
Immigration and Naturalization ServiceOMB No. 1115-0053
Form I-485, Application to Register
Permanent Residence or Adjust Status

START HERE - Please Type or Print

Part 1. Information about you.

Family Name LI	Given Name HE	Middle
Address - C/O		
Street Number and Name 1010 SHELDON DR. 403 King Pk. Apt. #		Apt. #
City NEWARK Middletown		
State DE	Zip Code 19711 19709	
Date of Birth (month/day/year) 1/2/1963	Country of Birth CHINA	
Social Security # 251-91-9963	A # (if any) N/A 98275559	
Date of Last Arrival (month/day/year) 8/16/1998	I-94 # 06596880707	
Current INS Status H1B	Expires on (month/day/year) 6/4/2005	

Part 2. Application Type. (check one)

NR 0150+242604-14.4

applying for adjustment to permanent resident status because:

☒ an immigrant petition giving me an immediately available immigrant visa number has been approved. (Attach a copy of the approval notice-- or a relative, special immigrant juvenile, or special immigrant military visa petition filed with this application will give me an immediately available visa number if approved.)

☐ my spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category which allows derivative status for spouses and children.

☐ I entered as a K-1 fiancé(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiancé(e). (Attach a copy of the fiancé(e) petition approval notice and the marriage certificate).

d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.

e. ☐ I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

f. ☐ I am the husband, wife or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

g. ☐ I have continuously resided in the U.S. since before January 1, 1972.

h. ☒ Other basis of eligibility. Explain. (If additional space is needed, use a separate piece of paper.)

I AM FILING I-140 TOGETHER WITH I-485

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2, 1964, whichever is later, and: (Check one)

i. ☐ I am a native or citizen of Cuba and meet the description in (e), above.

j. ☐ I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	04/15/2004 EHC-04-144-50517 EHCRC04
Reloc Sent	
Reloc Rec'd	
<input type="checkbox"/> Applicant Interviewed	

Section of Law

- ☐ Sec. 209(b), INA
☐ Sec. 13, Act of 9/11/57
☒ Sec. 245, INA
☐ Sec. 249, INA
☐ Sec. 1 Act of 11/2/66
☐ Sec. 2 Act of 11/2/66
☐ Other

Country Chargeable

China

Eligibility Under Sec. 245

- ☒ Approved Visa Petition
☐ Dependent of Principal Alien
☐ Special Immigrant
☐ Other

Preference E2b 10/29/02

ADJUDICATION OF STATUS AND SECURITY

APPROVED
FEB 26 2007
Janet W. Farth
001450

To be completed by

Attorney or Representative, if any
☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

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EXHIBIT B

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0053
Form I-485, Application to Register
Permanent Residence or Adjust Status

START HERE - Please Type or Print

Part 1. Information about you.

Family Name: ZHUO	Given Name: CHANGAI	Middle
Address - C/O		
Street Number and Name: 1010 SHELTON DR. 403 King Rail Ct		Apt. #
City: NEWARK - Middletown		
State: DE	Zip Code: 19711 19709	
Date of Birth (month/day/year): 7/12/1964	Country of Birth: CHINA	
Social Security #: 249-95-8159	A # (if any): N/A 98275560	
Date of Last Arrival (month/day/year): 8/30/1994	I-94 #: 75670819703	
Current INS Status: F1	Expires on (month/day/year): 5/31/2005	

Part 2. Application Type. (check one) **NRCS U-24260 4.14.4**

I am applying for adjustment to permanent resident status because:

- a. ☐ An immigrant petition giving me an immediately available immigrant visa number has been approved. (Attach a copy of the approval notice— or a relative, special immigrant juvenile, or special immigrant military visa petition filed with this application will give me an immediately available visa number if approved.)
- b. ☒ My spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category which allows derivative status for spouses and children.
- c. ☐ I entered as a K-1 fiancé(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiancé(e). (attach a copy of the fiancé(e) petition approval notice and the marriage certificate).
- d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.
- e. ☐ I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.
- f. ☐ I am the husband, wife or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.
- g. ☐ I have continuously resided in the U.S. since before January 1, 1972.
- h. ☒ Other basis of eligibility. Explain. (If additional space is needed, use a separate piece of paper.)
MY HUSBAND HAS FILED I-140 TOGETHER WITH I-485

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2, 1964, whichever is later, and: (Check one)

- i. ☐ I am a native or citizen of Cuba and meet the description in (e) above.
- j. ☐ I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f) above.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
<input type="checkbox"/> Applicant Interviewed	

Section of Law

☐ Sec. 209(b), INA

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☐ Sec. 249, INA

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☐ Sec. 2 Act of 11/2/66

☐ Other

Country Chargeable

China

Eligibility Under Sec. 245

☐ Approved Visa Petition

☒ Dependent of Principal Alien

☐ Special Immigrant

☐ Other

Preference **E27 10/29/02**

U.S. Department of Homeland Security

APPROVED

FEB 27 2007

Janet D. [Signature]

001-459

U.S. Citizenship and Immigration Service

To Be Completed by Attorney or Representative, if any

☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

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EXHIBIT C

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0053
Form I-485, Application to Register
Permanent Residence or Adjust Status

START HERE - Please Type or Print

Part 1. Information about you.

Family Name LI	Given Name ZEHAO	Middle
Address - C/O		
Street Number and Name 1010 SHELTON DR.		Apt. #
403 King Rail Ct		
City NEWARK	Middletown	
State DE	Zip Code 19711	19709
Date of Birth (month/day/year) 9/13/1990	Country of Birth CHINA	
Social Security # N/A	A # (if any) N/A 98275561	
Date of Last Arrival (month/day/year) 8/16/1998	I-94 # 06596881607	
Current INS Status H4	Expires on (month/day/year) 6/4/05	

t 2. Application Type. (check one)


applying for adjustment to permanent resident status because:

- a. ☐ an immigrant petition giving me an immediately available immigrant visa number has been approved. (Attach a copy of the approval notice-- or a relative, special immigrant juvenile, or special immigrant military visa petition filed with this application will give me an immediately available visa number if approved.)
- b. ☒ my spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category which allows derivative status for spouses and children.
- c. ☐ I entered as a K-1 fiancé(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiancé(e). [attach a copy of the fiancé(e) petition approval notice and the marriage certificate].
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- e. ☐ I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.
- f. ☐ I am the husband, wife or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.
- g. ☐ I have continuously resided in the U.S. since before January 1, 1972.
- h. ☒ Other basis of eligibility. Explain. (If additional space is needed, use a separate piece of paper.)
MY FATHER FILED I-140 TOGETHER WITH I-485.

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2, 1964, whichever is later, and: (Check one)

- i. ☐ I am a native or citizen of Cuba and meet the description in (e), above.
- j. ☐ I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
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<input type="checkbox"/> Applicant Interviewed	

Section of Law

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☐ Sec. 2 Act of 11/2/66
☐ Other

Country Chargeable

China

Eligibility Under Sec. 245

- ☐ Approved Visa Petition
☒ Dependent of Principal Alien
☐ Special Immigrant
☐ Other

Preference **E28 10/29/02**

U.S. Department of Homeland Security
APPROVED
APR 30 2007
<i>Janeth Danforth</i>
001459

Attorney or Representative, if any

- ☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

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